REMARKS

Claims 1-7 and 40 are rejected as being obvious from Snell and DiRienzo. The crux of the obviousness issue is the Examiner's broad interpretation of the recitation "monitoring data packages to determine revenue." The Examiner contends that the images being transmitted in DiRienzo has a price attached to it. However, the citation to DiRienzo relied upon by the Examiner does not support the contention. A price is not in fact attached to the image. Rather, a patient merely indicates a *bid* price. This is not revenue. Thus, the interpretation given by the Examiner, while broad, is not reasonable.

Nevertheless, claim 1 has been amended to more explicitly define the step by reciting "monitoring the data and service delivery path to determine a user's access to the first data inputs on the database network site and access to the patient medical services delivery application program", and further recite "determining a revenue for the user's access to the networked computing system based upon the monitoring of the data and service delivery path." The amended recitation of the monitoring and revenue determining now clearly identifies that the operation is "user access" based. DiRienzo clearly does not contemplate a user access based revenue determination.

Similarly, claim 40 has been amended to recite that a fee is determined based upon access to the patient database in the course of the disease management organization managing the patient.

The "broadest reasonable interpretation" given to the previous claim recitation does not apply to the amended claim language. Therefore, the obviousness rejection against claims 1-7 and 40 no longer remains and should be withdrawn.

Claims 8, 12-13, 18-21, 32, 33, 34, and 39 are rejected as being obvious over Snell. While the Examiner admits that several limitations are absent in Snell, the Examiner contends that the limitations are merely "obvious variants" of the Snell teachings to one skilled in the art. Yet nowhere does the Examiner substantiate that contention. More fundamentally, the Examiner fails to support the obviousness rejection with a *Graham* analysis. As the Supreme Court plainly stated in *KSR International v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), the *Graham* factors define the controlling inquiry.

The Examiner's rejection is completely devoid of any application of that controlling inquiry. As such, the obviousness rejection is without support and erroneous.

Moreover, there is no objective evidence as to what basis exists for one skilled in the art to make such multiple "obvious variant" substitutions. The whole of the office action discussion is a blatant exercise of a hindsight reconstruction of the claimed subject matter. In response to the previous office action, Applicant pointed out the deficiencies of the obviousness rejection. The Examiner fails to respond to those arguments. Such silence merely underscores the failure of the Examiner to set forth a *prima facie* case of obviousness grounded in a sound *Graham* analysis.

While pointing to pages 8-9 of the previous office action in apparent rebuttal to Applicant's argument, the Examiner in fact provides no direct rebuttal to Applicant's legal argument that a *prima facie* case of obviousness is not established by the "obvious variant" contention. In any event, the alleged "support" for the rejection in the previous office action is nothing more than a conclusion devoid of any factual support in a *Graham* analysis. The Examiner further calls upon Applicant to provide arguments as to why "these features of Snell do not read upon Applicant's limitations." First, this is backwards in terms of the allocation of the burden of proof on the issue. The Examiner must first set forth a *prima facie* case of obviousness, which has not been done. Second, Applicant would respectfully point out that the Examiner already admits that the limitations at issue are absent in Snell. That is, there is no "read on" of Snell one way or the other. Thus, there is nothing for Applicant to say.

The fundamental flaw in the obviousness rejection based on Snell is that there is a complete absence of a legal analysis based on the factual underpinnings set forth in *Graham*. Absent such an analysis, there is an absence of a *prima facie* case of obviousness and the rejection must be withdrawn.

As the pending claims are believed in condition for allowance, notice of the same is respectfully requested. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,

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Date

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